

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

OLIN MATICE GASKINS,

Plaintiff,

v.

Case No. 2:19-cv-00472

**SGT. P. M. EDELEN, Parkersburg Narcotics
Task Force and SWAT team; and
JOHN DOE #3, DEA agent,**

Defendants.

MEMORANDUM OPINION and ORDER

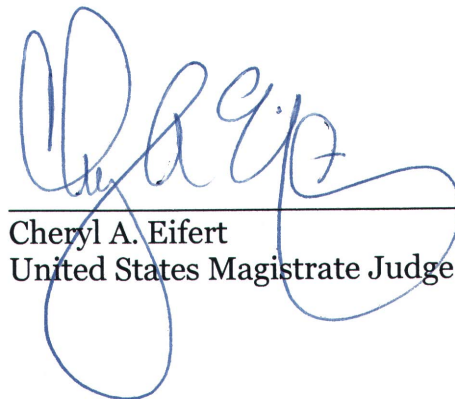
Pending is Plaintiff's Motion to Compel the Production of Documentation and Evidence. (ECF No. 88). Plaintiff contends that he received a blank disc in discovery, and he seeks an order compelling Edelen to provide complete responses to his discovery requests. (*Id.* at 1). Edelen responds that he never produced a disc to Plaintiff, and Plaintiff is perhaps referring to another defendant's discovery responses that were produced on a disc. (ECF No. 94 at 2, 2 n.1). Edelen attached Plaintiff's discovery requests served on September 1, 2021 and his responses served on October 1, 2021. (ECF No. 94-2). The certificate of service confirms that Edelen mailed the responses to Plaintiff. (*Id.* at 9). Plaintiff did not file a reply to his motion to compel disputing Edelen's contentions.

As an initial matter, the undersigned notes that she contemporaneously filed Proposed Findings and Recommendations in which she concluded that Plaintiff's action should be dismissed with prejudice, which could render this discovery dispute moot.

However, the undersigned further determines that Plaintiff failed to file this motion to compel within 30 days of the discovery responses being due, as required by the federal and local rules of civil procedure. Plaintiff served discovery on September 1, 2021, yet he did not file this motion until January 11, 2022. (ECF Nos. 88, 94-2). Therefore, the motion is untimely, and Plaintiff has not shown good cause for failing to comply with the deadline. L.R. Civ. P. 37.1(c). Plaintiff also does not indicate that he attempted to confer with Edelen in good faith before filing the motion, as required. Fed. R. Civ. P. 37(a)(1); L.R. Civ. P. 37.1(b). Finally, aside from procedural impediments, the motion has no merit because Plaintiff has not shown that Edelen failed to respond or provided incomplete responses to discovery requests. Fed. R. Civ. P. 37(a)(3)(B), 37(a)(4). For those reasons, the Court **DENIES** the motion. (ECF No. 88).

The Clerk is directed to provide a copy of this Memorandum Opinion and Order to Plaintiff and counsel of record.

ENTERED: March 2, 2022



Cheryl A. Eifert
United States Magistrate Judge